**IN** THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
CRIMINAL APPEAL NO.578 OF 2001

Nanabhau Asaram Borde,
Convict No.C/9609
presently lodged at
Yerawada Central Prison,
Pune. .... Appellant

- Versus -

The State .... Respondent

Shri Shiv Motriya, Advocate (appointed) for
the Appellant/Accused.

Smt. V.R. Bhonsale, Addl. Public Prosecutor,
for the Respondent-State.

**CORAM:** N.V. DABHOLKAR &
Smt.V.K. TAHILRAMANI, JJ.

**DATED:** JANUARY 31, 2006

**ORAL JUDGMENT (Per Smt.V.K.Tahilramani, J.):**

1. Through this appeal the appellant/accused Nanabhau Asaram Borde has challenged the Judgment and Order dated 29-8-1997, passed by the learned Addl. Sessions Judge for Greater Bombay in Sessions Case No.370 of 1984. By the said Judgment and Order, the learned Sessions Judge convicted the appellant under Section 302 of the Indian Penal Code (IPC) and sentenced him to RI for life.

2. The prosecution case, briefly stated, is as under:-

The marriage of deceased Panchsheela took place

with the appellant about seven years prior to the incident. At the relevant time the appellant and his wife Panchsheela were residing in a hut situated at Gaondevi Road, Poisar, Kandivli (East), Mumbai. The incident in the present case took place a little before midnight on 14-3-1984 in the hut in which the deceased and the appellant resided. PW-2 Shrirang Nikhalje, who resided next-door to the house of the appellant and the deceased and was also a relative of the accused, saw fire coming out from the hut of the accused. At that time, the door of the hut of the appellant was closed. This witness extinguished the fire by pouring water and he broke open the door. He noticed that Panchsheela was lying near the door. The hut was having two doors, one at the front side and another at the rear side. Shrirang found that the appellant was standing near the rear door. Thereafter Shrirang and the appellant and some other persons removed Panchsheela to Bhagwati Hospital. The police were then contacted. PW-7 API Sanjeev Kokil received telephonic message at about 00:40 hours from the police constable posted at Bhagwati Hospital that one Smt. Panchsheela was admitted in the hospital with serious burn injuries. API Kokil made arrangement for calling a Special Executive Magistrate and thereafter he himself visited the hospital and contacted the doctor on duty. API Kokil made enquiries with the doctor and obtained his permission for

recording the statement of the injured. Thereafter he recorded her statement i.e. Exhibit-15. He also obtained endorsement of PW-6 Dr. Uday Dandekar. The said endorsement is at Exhibit-13. After recording the statement, API Kokil read over and explained the statement to the injured and obtained her thumb impression on the statement. The recording of this statement was finished by 3:30 a.m. Thereafter, PW-1 SEM Raj Tiwari who had reached the hospital, recorded the dying declaration of Panchsheela between 3:35 a.m. to 4:05 a.m.. The said dying declaration is at Exhibit-5. In both the dying declarations Panchsheela has stated that there was a dispute on account of Panchsheela investing in Bishi without the knowledge of her husband i.e. the appellant. On account of the dispute, the appellant poured kerosene on her body and thereafter pushed her on a burning lamp due to which Panchsheela caught fire and sustained burn injuries. The first statement of Panchsheela, which is recorded by PW-7, is treated as the FIR. Initially the case was registered under Section 307 of IPC; however, thereafter at about 5:00 a.m. Panchsheela expired. After her death the case was converted to Section 302 of IPC. The body of Panchsheela was sent for post-mortem. She was found to have sustained 95% deep burn injuries. The cause of death was given as shock due to burns (unnatural). After completion of the investigation,

chargesheet came to be filed. In due course, the case was committed to the Court of Sessions.

3. Charge came to be framed against the appellant/accused under Section 302 of IPC. The appellant pleaded not guilty to the said charge and claimed to be tried. His plea is that of total denial. He has stated that he does not know how his wife sustained burn injuries. After going through the entire evidence adduced by the prosecution, the learned Sessions Judge convicted and sentenced the appellant/accused, as stated in para 1 above. Hence, this appeal.

4. We have heard learned Advocate Shri Shiv Motriya for the appellant and Smt. V.R. Bhonsale, A.P.P., for the respondent-State. We have perused the evidence as well as the Judgment and Order passed by the learned Sessions Judge. After carefully considering the matter, we are of the opinion that this appeal deserves to be dismissed.

5. The conviction of the appellant is mainly founded on two dying declarations i.e. Exhibit-5 and Exhibit-15.

Exhibit-15 was recorded by PW-7 API Kokil. API Kokil has stated that he received information at 00:40

hours that one Smt. Panchsheela was admitted in Bhagwati Hospital with serious burn injuries. He made necessary arrangement for calling a S.E.M. and thereafter went to the hospital. After reaching the hospital, he made enquiries with the doctor as to whether the lady was fit to give statement. After obtaining permission from the doctor, he recorded the statement (Exhibit-15) of the injured. This witness has stated that whatever questions were asked by him, were properly replied by the lady. At the time of recording of the statement of the lady, the lady and the doctor on duty were the only persons present. Thereafter, the statement was read over and explained to the injured lady before obtaining her thumb impression. The endorsement (Exhibit-13) of the doctor was thereafter obtained on the said dying declaration. In the said dying declaration Panchsheela stated that her husband picked up quarrel with her. Thereafter he poured kerosene on her person and pushed her on the flame of kerosene lamp, due to this she caught fire and sustained burn injuries.

Immediately after the dying declaration Exhibit-15 was recorded by PW-7 API Kokil, PW-1 SEM Raj Tiwari recorded the dying declaration (Exhibit-5) of Panchsheela. This witness has stated that at about 1:00 a.m. he received message from Kandivli Police Station

to come to Bhagwati Hospital to record dying declaration. Thereafter this witness went to the hospital. He first obtained permission from the doctor to record the statement of the patient and thereafter he recorded the statement of the patient. This witness has stated that the patient understood the questions put by him and that she replied the questions properly. After recording the dying declaration, he has obtained endorsement from the doctor as well as the thumb impression of the patient. This witness has specifically stated that neither the police officer nor the police constable were present near the cot or in the ward. No relatives were present around the cot of the patient. This dying declaration was recorded between 3:35 a.m. to 4:05 a.m. In this dying declaration same facts were narrated by Panchsheela to the SEM. Thus it is seen that both the dying declarations are consistent. In both the dying declarations Panchsheela has implicated the appellant. In both her statements she has stated that the appellant poured kerosene on her person and pushed her on the burning flame of kerosene lamp, due to which she caught fire. Nothing has been elicited in the cross-examination of any of the three witnesses relating to the dying declarations so as to disbelieve their testimony. The said witnesses are SEM Raj Tiwari, PW-7 API Kokil and PW-6 Dr. Dandekar, who had given endorsement on both the dying declarations

i.e., one recorded by the SEM PW-1 Raj Tiwari and the other by PW-7 API Kokil. On going through the evidence of these witnesses and the two dying declarations, we have no hesitation in relying on the said dying declarations.

6. Besides these two dying declarations, which clearly implicate the appellant, we find that there is one other circumstance which goes against the appellant. This circumstance is the conduct of the appellant himself at the time of the incident. The prosecution has examined PW-2 Shrirang Nikhalje, who is the immediate neighbour as well as the relative of the appellant from his paternal side. This witness has stated that he was residing in the hut adjacent to that of the appellant. On the fateful night he saw fire coming out from the hut of the appellant. At that time the door of the hut of the appellant was closed. Shrirang stated that he extinguished the fire by pouring water. Shrirang also broke open the door. When he entered inside, he saw that Panchsheela was lying near the door of the hut. The hut was having two doors, one at the front and another at the rear side. This witness has specifically stated that the appellant was standing near the rear door. The spot panchnama also bears out the averments of this witness in as much as the spot panchnama shows that the latch in the centre of the north-west door was

seen slightly damaged. This corroborates the evidence of PW-2 Shrirang who has stated that he broke open the door and thereafter entered the hut of the appellant. The conduct of the appellant, as brought on record by his own relation PW-2 Shrirang, clearly shows that the appellant made no attempt to save his wife or to give her aid in any manner and he just stood there passively watching what was happening. This inaction on the part of the appellant and his unhelpful and indifferent attitude towards his wife would also, in our opinion, go against the appellant.

7. Shri Shiv Motriya pointed out that the appellant had also sustained burn injuries on his hands and this shows that the appellant made efforts to extinguish the fire. It is true that the evidence on record shows that the appellant also sustained burn injuries on his hands. This has been brought on record in the evidence of PW-7 API Kokil. As far as the appellant is concerned, in his statement under Section 313 of the Code of Criminal Procedure, 1973, he has stated that he does not know how his wife sustained burn injuries. The appellant has not said that he tried to extinguish the fire. Thus, it is not the case of the appellant himself that he tried to extinguish the fire and hence he sustained burn injuries. In fact, his case is that of total denial. From the two dying declarations and the evidence on

record, it is seen that the appellant poured kerosene on his wife Panchsheela and thereafter pushed her on the burning flame of a kerosene lamp. From the evidence it is clear that the appellant had caught hold of his wife near the kerosene lamp till she caught fire and it is due to this that he appears to have sustained the burn injuries on his hands and not on account of extinguishing the fire.

8. As observed earlier by us, two dying declarations of the deceased have been recorded i.e. Exhibit-5 and Exhibit-15. Both the dying declarations are consistent and clearly implicate the appellant. Both the dying declarations are free from any outside influence. Tutoring to Panchsheela is totally ruled out. No relative was present nor was any police officer or police constable present when the dying declaration was recorded by PW-1 SEM Raj Tiwari. So also no relative was present when the dying declaration was recorded by API Kokil. Both the dying declarations inspire confidence and we find them to be consistent, credible and reliable. Looking to the evidence on record, we have no hesitation in relying on the two dying declarations. In our view, the prosecution has proved that it is the appellant and the appellant alone who had set the deceased on fire in his hut by pouring kerosene on her person and thereafter pushing her on to a burning

flame. In our view, there is sufficient material on record to show the complicity of the appellant in the crime.

9. Advocate Shri Shiv Motriya was appointed as amicus curaie for prosecuting the appeal on behalf of the appellant. We found him to be very well prepared and he has very ably conducted this appeal. We quantify his professional charges at Rs.2500/-.

10. In the result, we confirm the conviction and the sentence imposed upon the appellant/accused for the offence under Section 302 of IPC and dismiss the appeal. The appellant is in jail and he shall serve out his sentence.

The Registrar (Judicial) shall ensure supply of certified copy of this Judgment, free of cost, to the appellant in prison through the prison authorities.

**(Smt. V.K.Tahilramani, J.)** **(N.V.Dabholkar, J.)**